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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,184	11/06/2000	Venky Narayanaswamy	869.005US1(5302)	8123

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. BOX 2938  
MINNEAPOLIS, MN 55402

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/16/2003

20

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/707,184

Applicant(s)

NARAYANASWAMY ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-15, 27, 28 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-15, 27-28 and 30-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Claims 1-9, 11-15, 27-28 and 30-35 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed May 28, applicant amended the claims to recite the limitations of "flour and fat that are untreated by heat when mixed together" and "mixing the wet blend and dry blend without an addition of heat". The limitations are not supported by the original disclosure because the specification does not disclose anything about heating or not heat.

Claims 1-9, 11-15, 27-28 and 30-35 rejected under 35 U.S.C. 103(a) as being unpatentable over Seewi et al in view of Le Flecher et al and "The Encyclopedia of Packaging Technology".

Seewi et al disclose a ready-to-bake dough which is storage stable at room temperature. The dough comprises 15-60% flour, 5-40% edible fat, 5-35% texturizer and 5-18% water. The texturizer includes ingredients such as glucose, fructose, sucrose etc... The water activity of the dough is about .75 or less. The dough can be used to make bread, cookies, biscuits, pastries, pie and the like. The flour can be wheat, rye, rice or maize flour. The dough can be cut into shapes. (see columns 2-4)

Seewi et al do not disclose that the flour and fat are untreated with heat, the dough is placed in a substantially gas-impermeable container, using inert gas containing less than 4% residual oxygen in the container and in the dough,

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encapsulated leavening ingredient, container comprising a baking pan and the type of doughs such as roll dough, scone dough.

Le Flecher et al teach to pack dough into a gas-impermeable pouch in an atmosphere of an inert gas containing less than 4% residual oxygen. They are teach to leaven the dough by using encapsulated chemical agent or the leavening can be obtained by inert gas which is partially soluble in the dough such as N<sub>2</sub>O. The N<sub>2</sub>O gas is preferred because it does not change the acidity and the taste of the product.

The textbook teaches controlled atmosphere packaging by vacuum packaging or modified atmosphere packaging by introducing an inert gas such as nitrogen flushing to enhance shelf stability of packaged products including baked goods.

Modified atmosphere packaging by flushing with an inert gas is a known technique used in the art to enhance the shelf stability of packaged product. This is shown both by the textbook and Le Flecher et al. It would have been obvious to one skilled in the art to use the textbook and Le Flecher et al techniques to package the Seewi et al dough to further enhance the shelf stability of the product. When modified atmosphere packaging is used, it would have been obvious to use gas-impermeable container such as taught by Le Flecher et al to prevent oxygen from entering the container. It would have been obvious to one skilled in the art to follow the residual oxygen content taught by Le Flecher et al because they disclose a residual oxygen content of less than 4% gives shelf stability at room temperature. The Seewi et al dough has a ratio of sugar to flour ranges from .08-2.33:1; thus, it falls within the range claimed. Seewi et al do not disclose leavening ingredients; however, it would have

been obvious to one skilled in the art to add leavening ingredients depending on the type of dough product. Some dough products require leavening agent and others do not. It would have been within the skill of one in the art to determine the need of a leavening ingredient depending on the type of dough. When a leavening agent is needed, it would have been obvious to use encapsulated leavening ingredient as taught by Le Flecher to obtain stability during the storage of the dough. It would also have been obvious to use inert gas as the leavening ingredient because Le Flecher et al teach such inert gas functions as leavening agent by forming gas bubbles and contributes to volume increase. It would have been obvious to package the dough in a container, which can be used as baking pan to have a convenient food package because this would eliminate the need of transferring the dough to a baking pan. This concept is well known in the art and can be found in many commercial food products. As to the type of dough, it would have been obvious to make different types of dough by varying the ingredients and the additives used. Seewi et al teach the dough can be used to make different products such as bread, cookies, biscuits, pastries and the like. It would have been obvious to use both sugar and a polyol depending on the type of dough, the degree of sweetness desired and the water activity wanted for the particular dough. With respect to claims 31-35, the method by which the dough is made does not determine the patentability of "product-by-process" claims. With respect to the limitation of the flour and fat being untreated by heat, this is a difference in the processing step and the determination of a product is based on the product (See In re Thorpe 227 USPQ 964). Applicant has not shown that the different processing step leads to a

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different dough product. As to the density, the density of the dough depends on the type of dough and the texture. For example, a high density dough gives a harder texture and a low density dough gives a lighter texture. Thus, it would have been obvious to determine the density in accordance with the type of dough and the texture desired in the end product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Mon-Wed.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

July 13, 2003

  
LIEN TRAN  
PRIMARY EXAMINER  
